Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
2002 Biennial Review of Regulations within the Purview of the Wireless Telecommunications Bureau	)	WT Docket No. 02-310

To: The Commission

EX PARTE COMMENTS

Texas RSA 15B2 Limited Partnership d/b/a Five Star Wireless ("Five Star"), Enterprise Wireless PCS, LLC ("Enterprise") and Uintah Basin Electronic Telecommunications d/b/a UBET Wireless ("UBET") (collectively, "the Carriers"), by their attorneys and pursuant to Rule Sections 1.2106(b) and 1.49(f), hereby submit comments in support of the Commission's efforts to streamline its rules and regulations. Five Star has been licensed by the FCC to provide cellular radiotelephone service in the B2 segment of CMA666 (Texas 15 – Concho RSA). UBET has been licensed by the FCC to provide cellular radiotelephone service in the B2 segment of CMA677 (Utah-5 – Carbon RSA) and it holds broadband PCS licenses in the Rock Springs, Wyoming BTA (Market B381), the Grand Junction, Colorado BTA (Market B168), and portions of the Denver, Colorado BTA (Market B110) and the Salt Lake City – Ogden, Utah BTA (Market B399). Enterprise holds broadband PCS licenses in the Dothan-Enterprise, Alabama BTA (Market B115), the Opelika-Auburn, Alabama BTA (Market B334); the La Grange, Georgia BTA (Market B237) and the Albany-Tifton, Georgia BTA (Market B006). The Carriers operate in different radio services; however, they share concerns about the adverse impact on their businesses from outdated or imprecise Commission rules and policies. Following are their comments.

I. THE COMMISSION SHOULD STREAMLINE NATIONAL ENVIRONMENTAL POLICY ACT PROCEDURES

The carriers concur with the Cellular Telecommunications & Internet Association ("CTIA") suggestion that the Commission streamline the National Environmental Policy Act of 1969 ("NEPA") compliance procedures.[1] Today's competitive communications marketplace requires that wireless carriers retain the flexibility to respond to market demands. Carriers must be able to deploy their systems rapidly, either for expansion to meet market demand or to improve coverage in a particular area. However, to do so, they often must secure additional tower space. This can result in a carrier being forced to navigate labyrinthine tower regulations for each county or municipality, costing that carrier precious time and resources. An inability to do this quickly and successfully could result in a loss of customers and have an adverse financial impact on the carrier and result in degraded service to the public.

The Commission, in conjunction with the National Conference of State Historic Preservation Officers ("NCSHPO") and the Advisory Council on Historic Preservation ("ACHP"), on March 16, 2001 issued a "Nationwide Programmatic Agreement for the Collocation of Wireless Antennas".[2] This Nationwide Programmatic Agreement ("Programmatic Agreement") is intended to streamline the process for reviewing proposed antenna construction, by making the process more predictable and easier so that companies would be encouraged to collocate antennas on existing towers rather than build new towers, which could have a greater effect on the environment.[3]

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[1] CTIA *Petition for Rulemaking*, p. 9.

[2] Wireless Telecommunications Bureau Announces Execution of Programmatic Agreement with Respect to Collocating Wireless Antennas on Existing Structures, *Public Notice*, DA 01-691, rel. March 16, 2001 ("Programmatic Agreement").

[3] The Programmatic Agreement does not apply to tribal lands, nor does it prevent members of the public from complaining about any possible alleged adverse effects of such collocation.

According to the Programmatic Agreement, prior to the placement of an antenna on a tower constructed on or before March 16, 2001, the proposed construction must be reviewed under Section III of the Programmatic Agreement. Section III states that "an antenna may be mounted on an existing tower constructed on or before March 16, 2001 without that collocation being subject to review under the consultation process set forth under Subpart B of 36 CFR Part 800, **unless**:

- The mounting of the antenna will result in a substantial increase in the size of the tower. Substantial increase means increasing the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; installing more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower at the level of the appurtenance, whichever is greater (the mounting of the antenna may exceed the size limits to shelter the antenna from inclement weather or to connect the antenna to the tower via cable); or that mounting the antenna would involve excavation outside the current tower site (defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site); or

- The tower has been determined by the FCC to have an effect on one or more historic properties, unless such affect has been found to be not adverse through a no adverse effect finding, or if found to be adverse or potentially adverse, such effect has been resolved, through a conditional no adverse effect determination, a Memorandum of Agreement, a programmatic agreement, or otherwise in compliance with Section 106 and Subpart B of 36 CFR Part 800; or

- The tower is the subject of a pending environmental review or related proceeding before the FCC involving compliance with Section 106 of the National Historic Preservation Act; or

- The collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a State Historic Preservation Officer (SHPO) or the Advisory Council on Historic Preservation (ACHP), that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

Under the Programmatic Agreement, antennas may be mounted on an existing tower constructed after March 16, 2001 without being reviewed under the consultation process **unless**:

- The Section 106 review process and any FCC environmental review process required by the FCC have not been completed; or

- The mounting of the antenna will result in a substantial increase in the size of the tower; or

- The tower as built or proposed has been determined by the FCC to have an effect on one or more historic properties, unless such effect has been found to be not adverse through a no adverse effect finding, or if found to be adverse or potentially adverse, has been resolved, such as through a conditional no adverse effect determination, a Memorandum of Agreement, a programmatic agreement, or otherwise in compliance with Section 106 and Subpart B of 36 CFR Part 800; or

- The collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a State Historic Preservation Officer (SHPO) or the Advisory Council on Historic Preservation (ACHP), that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.[4]

An antenna may be mounted on a building or non-tower structure outside of historic districts without the collocation being reviewed under the consultation process unless:

- The building or structure is over 45 years old; or

- The building or structure is inside the boundary of a historic district, or if the antenna is visible from the ground level of the historic district, or the building or structure is within 250 feet of the boundary of the historic district; or

- The building or non-tower structure is a designated National Historic Landmark, or listed in or eligible for listing in the National Register of Historic Places based upon the review of the licensee, tower company or applicant for an antenna license; or

- The collocation licensee or the owner of the tower has received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a SHPO or the ACHP, that the collocation has an adverse effect on one or more historic properties. Any such complaint must be in writing and supported by substantial evidence describing how the effect from the collocation is adverse to the attributes that qualify any affected historic property for eligibility or potential eligibility for the National Register.

[4] Programmatic Agreement.

The Carriers agree that Commission should amend Section 1.1307(a) to reflect the adoption of the Programmatic Agreement. In addition, the Commission should "grandfather" towers and structures that have not gone through Section 106 review prior to March 16, 2001 with respect to antennas already mounted on such structures. A carrier will be less likely to collocate on a tower or structure that otherwise complies with the Programmatic Agreement, if there is a possibility that the tower or structure could still be challenged under the Section 106 review process for a prior antenna mounting. This frustrates the purpose of the Programmatic Agreement -- to encourage carriers to collocate on existing structures rather than construct a new facility -- and should be remedied.

The Carriers agree with CTIA that the Commission should enforce the thirty-day comment period for SHPOs to comment in a Section 106 review.[5] This would permit a carrier to promptly pursue an alternative course of action to find a new appropriate tower site if necessary. In addition, the Carriers agree that SHPOs should have objective standards on which to base any objections to a proposed antenna siting.[6] This would be a great improvement over permitting each individual SHPO to subjectively determine what might constitute an "adverse impact." It would also guard against the risk that certain SHPOs may interpose a general or unsubstantiated objection, before carefully reviewing a proposal, as a way to circumvent the 30-day comment period.

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[5] CTIA, *Petition for Rulemaking*, p. 12.

[6] Id. at 13.

II. THE COMMISSION SHOULD ELIMINATE THE ANNUAL EMPLOYMENT REPORT

The Carriers support CTIA in its request that the Commission eliminate the annual employment report required by Section 1.815 of the Commission's rules.[7] This information is already supplied to state and federal agencies. If the Commission makes no immediate use of the data it receives from these reports, it should refrain from requiring such information.

III. THE COMMISSION SHOULD ADD FLEXIBILITY TO ITS ENHANCED 911 RULES

The Carriers agree with CTIA that the implementation period for Phase II Enhanced 911 ("E911") services should be relaxed and that the wireless licensee should be permitted to negotiate a mutually agreeable implementation schedule with the appropriate Public Safety Answering Point ("PSAP").[8] A more flexible approach to E911 implementation will not necessarily delay the provision of the service to the public. Rather, permitting a carrier and a PSAP to agree mutually on an implementation schedule could result in a more practical rollout schedule and the more rapid provision of service to the public.

The Carriers further agree that the six-month implementation period for licensees deploying a network-based Phase II solution[9] should be tolled until a PSAP provides the carrier with documents indicating its readiness to use the enhanced data to be delivered by the carrier. E911 service does not reach the consumer if one party is ready for deployment and the other is not. In addition, requiring a carrier to implement its Phase II E911 solution before the PSAP is ready places an undue burden on the licensee. This burden draws resources away from the

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[7] Commission Rule Section 1.815(a) states in relevant part, "Each common carrier licensee or permittee with 16 or more full time employees shall file with the Commission, on or before May 31 of each year, on FCC Form 395, an annual employment report." 47 C.F.R. § 1.815(a).

[8] CTIA, *Petition for Rulemaking*, p.18.

[9] 47 C.F.R. §20.18(f).

carrier's buildout of reliable coverage to the public, which has safety implications. An E911 capable phone does not work if the carrier has not yet been able to implement signal coverage to the caller's location.

The National Emergency Number Association ("NENA"), the Association of Public Safety Communications Officials, International ("APCO") and the National Association of State Nine One One Administrators ("NASNA") (collectively, "the public safety entities") request clarification of Section 20.18(b), which requires carriers to forward all 911 calls to the designated PSAP. These entities seek a ruling that this obligation does not extend to repeated abusive or harassing 911 calls.[10] The Carriers respectfully suggest that the term "abusive or harassing" is too vague to be practical. Carriers will not know the content of 911 calls passed through their systems. Therefore, they will not be able to determine if a call is abusive or harassing. In addition, the mere fact that a call is repeated does not provide a carrier with any information that the call is not a legitimate emergency. There are any number of reasons that someone may make multiple 911 calls. Without knowing the content of those calls, the carriers are not in a position to judge whether they are legitimate, and therefore the carrier risks great liability in determining whether to put a repeated call through to the PSAP.[11]

In addition, the Commission's rules should be amended to reinstate the provision conditioning the carrier's obligation to provide 911 services on the availability of a cost recovery mechanism for the carrier's costs. The Commission may choose to make this provision

[10] Comments of NENA, APCO and NASNA, citing a letter of James R. Hobson to Secretary Dortch, May 31, 2002.

[11] Even if the content was known to the carrier, it has no standards for determining if a call is harassing or abusive. If a distraught caller were to use foul words, would the carrier be expected to block the call? There is no room for second-guessing in an emergency situation, and carriers would be exposed to unreasonable liability.

applicable only to Tier III carriers, (as defined in the Commission's Order to Stay, FCC 02-210, released July 26, 2002); it is foreseeable that certain of these carriers might be adversely affected by a requirement that they proceed with the implementation of a very expensive technology without the means to pay for that technology. The Commission is sympathetic to the limited resources of the PSAPs and should extend that sympathy, and the cost-recovery provision, to the small carriers.

IV. THE COMMISSION MUST CLARIFY ITS E911 RULES

In its July 26, 2002 Order staying certain E911 Phase II deadlines, the Commission appears to have inadvertently modified carriers' service coverage area requirements. The Commission stated:

> Licensees who employ a network-based location technology shall provide Phase II enhanced service to at least 50 percent of *the PSAP's coverage area or population* beginning September 1, 2003 (approximately 13 months from the date of this Order), or within 6 months of a PSAP request, whichever is later; and to 100 percent of *the PSAP's coverage area or population* by September 1, 2004 or within 18 months of such a request, whichever is later.

Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Order to Stay*, CC Docket 94-102, ___ FCC Rcd ____, FCC 02-210, ¶ 32 (July 26, 2002)(emphasis added)("*Order to Stay*"). The actual wording of the rule is as follows:

> Phase-in for network-based location technologies. Licensees subject to this section who employ a network-based location technology shall provide Phase II 911 enhanced service to at least 50 percent of *their coverage area or 50 percent of their population* beginning October 1, 2001, or within 6 months of a PSAP request, whichever is later; and to 100 percent of *their coverage area or 100 percent of their population* within 18 months of such a request or by October 1, 2002, whichever is later.

47 C.F.R. § 20.18(f)(emphasis added).

The language in the *Order to Stay* is clearly in error and the Commission should issue an *Erratum* or take other appropriate action to correct the language on the public record. To comply with the *Order to Stay* coverage requirement, a carrier could face the possibility of being required to provide E911 Phase II service in an area larger than that required by the clear text of Rule 20.18(f). Clearly, the Commission did not intend carriers to expand their coverage areas in such a fashion.[12]

V. THE COMMISSION SHOULD ELIMINATE THE LOCAL NUMBER PORTABILITY REQUIREMENT FOR CMRS CARRIERS

The Carriers join with CTIA in urging the Commission to eliminate the local number portability ("LNP") mandate for Commercial Mobile Radio Service ("CMRS") carriers.[13] The Commission improperly linked LNP to thousand-block number pooling without appropriate justification. There is no statutory requirement that CMRS carriers provide LNP, therefore, the Commission should not require it.

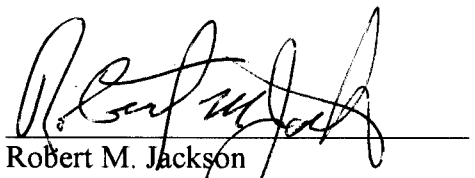
[12] Indeed, the Commission cannot expand the coverage requirements for carriers in an Order to Stay, but must formally amend the rule for any change to have the effect of law. "So long as the regulation remains in force the Executive Branch is bound by it," United States v. Nixon, 418 U.S. 683, 695 (1974).

[13] CTIA, *Petition for Rulemaking*, p. 25.

VI. CONCLUSION

In sum, the Carriers endorse the above suggestions initially broached by CTIA, and respectfully request that the Commission take prompt action on the suggestions made in comments and reply comments to the 2002 Biennial Review.

Respectfully Submitted,

By 

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